

### REMARKS

1. In response to the Office Action mailed January 16, 2007, Applicants respectfully requests reconsideration. Claims 1-21 were originally presented in the application. In the outstanding Office Action, all claims have been rejected. By the foregoing Amendments, claims 1, 8, 9, 10, 13, 14, 17, 19, 20, and 21 have been amended. Claims 2, 16, and 18 have been canceled and no claims have been added. Thus, upon entry of this paper, claims 1, 3-15, 17, and 19-21 will be pending in this application. Of these twenty-one (21) claims, 4 claims (claims 1, 13, 17, and 21) are independent. Based on the above Amendments and following Remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

#### *Art of Record*

2. Applicants acknowledge receipt of form PTO-892 identifying additional references made of record by the Examiner.

3. Applicants acknowledge receipt of the form PTO Form 1449 filed by Applicants on August 12, 2003, which has been initialed by the Examiner indicating consideration of the references cited therein.

#### *Objections to the Specification*

4. In the Office Action, the Examiner objected to the specification for 1) the non-capitalization of alleged trademarks; 2) the lack of serial numbers for the related applications, and 3) the lack of a period at the end of the paragraph on page 2 line 11. Applicants have amended the specification to insert the serial numbers, the missing period, and to fix other typographical errors in the specification.

5. With regard to the alleged use of trademarks, the Examiner objected to the specification for not capitalizing every use of the alleged trademarks JAVA, JSP, EJB, JDBC, RMI, and JVM. Applicants respectfully disagree with the Examiner's assertion that the alleged marks must be capitalized everywhere in the specification. Rather, it is common practice to simply capitalize (or otherwise identify as a trademark) the first usage of a mark and then subsequent usages need not be capitalized. For example, Sun Microsystem's trademark policies request that the first usage of a trademarked term be identified as a trademark. (*See, e.g.*, <http://www.sun.com/policies/trademarks/> ("In every other context, use an appropriate symbol

in both the first prominent use of the trademark (in headlines, banners, etc.) and in the first use in the text of body copy.”))

6. Applicants also respectfully submit that the Examiner has identified no basis for concluding the listed terms are trademarks, nor has the Examiner identified who is the alleged owner of the marks. Additionally, a quick examination of recently issued patents notes that the identified terms are not bolded throughout the specification. For example, in U.S. Patent No. 7,197,750 entitled “Java Bytecode instruction for determining hashcode values,” issued on March 27, 2007 with the identified assignee being Sun Microsystems, Inc., Applicants note the terms Java and Java Virtual Machine appear throughout the patent, but neither appear all in caps.

7. However, in order to expedite prosecution of the present application, Applicants have capitalized the first usage of the term Java in the specification. Applicants also note that the terms JVM, EJB, JDBC, RMI, and JVM are acronyms and are accordingly capitalized throughout Applicant’s specification. As such, Applicants respectfully request that the Examiner reconsider and withdraw the objection to the specification.

#### ***Claim Objections***

8. Claims 8, 9, 13, 17, 18-20, and 21 have been objected to because of various informalities. Applicants have amended claims 8, 9, 13, 17, 18-20, and 21 to overcome these objections and respectfully thank the Examiner for the Examiner’s helpful suggestions in how the claims may be amended. Applicants accordingly respectfully request that the objections to the claims for formalities be reconsidered and withdrawn.

#### ***Claim Rejections under 35 U.S.C. §112***

9. Independent claims 1, 13, 17 and 21 and dependent claims 2-12, 14-16 and 18-20 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants thank the Examiner for the Examiner’s helpful suggestions in how the claims may be amended. With regard to the acronym “RMI,” this acronym stands for “Remote Method Invocation,” which is believed to be a generic term. Applicants have accordingly amended claim 8 to insert “Remote Method Invocation.” With regard to the other alleged trademarks appearing in the claims, Applicants have amended the claims to delete the alleged trademark in order to expedite prosecution of the application and without

commenting on whether said terms are trademarks or not. Applicants, accordingly, respectfully request that the Examiner reconsider and withdraw the rejections

***Claim Rejections under 35 U.S.C. §101***

10. Additionally, independent claims 13 and 21 and dependent claims 14-16 have been rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

11. With regard to claim 13, the Examiner stated that the claim allegedly lacks the necessary physical components to constitute a machine or a manufacture. Applicants have amended claim 13 to recite “[a] system comprising a processor....” The Examiner further alleged that claim 13 does not produce a concrete, tangible, and useful result because the step of determining the response time is not recited in the claim. Applicants have further amended claim 13 to recite “an analysis and presentation module in communication with said ARM agent for presenting said response time to a user and/or storing said response time in a database.” Applicants accordingly respectfully request that the Examiner reconsider and withdraw the rejection to claim 13.

12. With regard to claim 21, the Examiner alleged that claim 21 does not produce a concrete, tangible, and useful result because the claim does not recite determining the response time associated with a request transmitted from a web browser to a web server. (See, Office Action at 9.) Applicants have amended claim 21 to recite “utilizing said script entity to stop the clock, to thereby determine said response time.” Applicants, accordingly, respectfully request that the Examiner reconsider and withdraw the rejection to claim 21.

***Claim Rejections under 35 U.S.C. §102***

13. Claims 1-21 have been rejected under 35 U.S.C. § 102(e) as clearly anticipated by U.S. Patent Number 6,792,460 to Oulu (hereinafter, “Oulu”). Based upon the above Amendments and following Remarks, Applicants respectfully request reconsideration and withdrawal of these rejections.

14. Claim 1 recites, in part, “inserting an instrumentation code in a bytecode representation of said method or function to generate a call to an Application Response Measurement (ARM) agent to cause the agent to effect generation of a start time marker upon start of execution of said method or function and a stop time marker upon completion of execution of said method or function, wherein the ARM agent is one of a plurality of agents of an ARM

protocol....” Applicants respectfully assert that for at least the below discussed reasons, Oulu does not teach or suggest this combination of elements.

15. Oulu is directed to a system that monitors the amount of time spent by specific application components during execution of specific web site transactions. (*See*, Oulu at Abstract.) Oulu accomplishes this by instrumenting some or all methods within a monitored class. (*See*, Oulu at col. 11 lines 51-54.) Oulu discloses that instrumenting a particular method by adding a start call at the beginning of the method and an end call at the end of the method. (*See*, Oulu at col. 11 lines 54-57.) These calls are to corresponding methods of a probe, which records the start and stop times of the instrumented method. (*See*, Oulu at col. 11 lines 57-61.) This probe 122 is disclosed as executing on an application server 100 and includes 1) the code for instrumenting the methods 610, 2) the aforementioned start 612 and end methods 614 and 3) a reporting method 630. (*See*, Oulu at FIG. 6 and col. 12 line 26-col. 13 line 21.) Thus, in the system of Oulu, the probe is specialized software. Oulu, accordingly, does not teach or suggest that these methods are ARM agents, nor that these methods are one of a plurality of agents of a standardized protocol. Rather, as noted above, the system of Oulu teaches a probe that includes the instrumentation method and start and end methods, and not the use of one of a plurality of agents of a standardized ARM protocol.

16. Applicants accordingly respectfully submit that Oulu fails to teach or suggest “inserting an instrumentation code in a bytecode representation of said method or function to generate a call to an Application Response Measurement (ARM) agent to cause the agent to effect generation of a start time marker upon start of execution of said method or function and a stop time marker upon completion of execution of said method or function, wherein the ARM agent is one of a plurality of agents of an ARM protocol,” as recited by claim 1.

17. Amended independent claim 13 recites, in part, “an application response measurement (ARM) agent in communication with said interface module, wherein said interface module, upon invocation by said instrumentation code, calls said ARM agent to cause generation of said start and stop time markers by said ARM agent wherein the ARM agent is one of a plurality of agents of an ARM protocol.” Applicants, accordingly, respectfully submit that for at least similar reasons to those discussed above, amended independent claim 13 is likewise allowable over Oulu.

18. As amended, independent claim 17 recites, “invoking, by the monitoring agent in response to receiving the first call back, a start method of an Application Response

Measurement (ARM) agent to save a start time marker upon start of said transaction, wherein the ARM agent is one of a plurality of agents of an ARM protocol....” Applicants, accordingly, respectfully submit that for at least similar reasons to those discussed above, amended independent claim 17 is likewise allowable over Oulu.

19. Independent claim 21 recites, in part, “deploying a script entity on said web browser, said script entity registering with said web server to receive one or more call backs therefrom at selected points during a transaction initiated by said web server in response to the request from the web browser....” Applicant respectfully submits that the reliance on Oulu is misplaced for at least the following reasons.

20. In rejecting claim 21, the Examiner asserted that Oulu discloses “deploying a script entity on said web browser.” In support, the Examiner relied on the probe disclosed in column 5 lines 36-46 and column 11 lines 52-57 of Oulu. These portions of Oulu, however, do not disclose that the probe of Oulu is deployed on a web browser, but instead they disclose that the probe of Oulu executes on an application server. For example, column 5 lines 36-46 describe FIG. 1 of Oulu and expressly state that probe 122 is installed on an application server 100 of a web site. (*See*, Oulu at col. 5 lines 36-40.) As such, the probe 122 of Oulu is not deployed on a web browser, but instead on an application server of a web site.

21. Applicants accordingly respectfully submit that Oulu fails to teach or suggest “deploying a script entity on said web browser, said script entity registering with said web server to receive one or more call backs therefrom at selected points during a transaction initiated by said web server in response to the request from the web browser....,” as recited by claim 21. Applicant therefore respectfully request that the Examiner reconsider and withdraw the rejection to claim 21 for at least this reason.

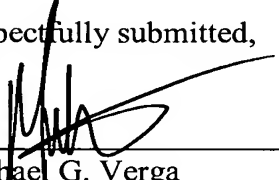
### ***Dependent Claims***

22. The dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter which makes them *a fortiori* independently patentable over the art of record. Accordingly, Applicants respectfully request that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

***Conclusion***

23. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

Respectfully submitted,

  
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